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Attorney for John Reger Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

In re:	**Case No: 16-22230-D-7**
NORMAN RAY RYAN, CHERI CATHERINE RYAN	**DCN: MPD-4**
Debtors /	**Date: April 12, 2017** **Time: 10:00 a.m.** **Place: Courtroom 34, Dept D, 501 I Street, 6th Floor, Sacramento, CA 95814**

MOTION FOR APPROVAL OF COMPROMISE AND SETTLEMENT OF THE BANKRUPTCY ESTATE'S (1) CLAIM TO AVOID AND RECOVER PREFERENTIAL TRANSFER AND (2) OBJECTION TO DEBTORS' HOMESTEAD EXEMPTION

The chapter 7 trustee John Reger ("Reger") requests an order approving compromise and settlement of the bankruptcy estate's (1) claim to avoid and recover preferential transfer and (2) objection to Debtors' homestead exemption ("Motion").

1. Pertinent Facts

On April 8, 2016 Norman Ray Ryan and Cheri Catherine Ryan ("Ryan" and/or "Debtors") filed their chapter 7 bankruptcy petition. While investigating this case Reger discovered Harry F. Clew Jr., individually and as trustee of the Harry F. Clew Jr. Family Trust ("Clew"), the father of Co Debtor Cheri Catherine Ryan, had loaned the Debtors $98,000.00 on November 15, 2010 (Note #1), $95,000.00 on November 19, 2010 (Note #2) and

$253,500.00 on July 11, 2011 (Note #3). All notes were unsecured. The Debtors had been making regular monthly payments to Clew from the inception of each note through the date of filing. The total paid for all 3 notes during the year pre filing was $24,717.12.

Reger also discovered that on March 28, 2016, less than 2 weeks before filing their bankruptcy petition, the Debtors signed a deed of trust in favor of Clew and recorded it with the Shasta County Recorder to secure Note #3 which had been used to purchase the Debtors' residence. The unpaid amount of Note #3 as of the date of filing was $229,863.00. In light of these facts Reger contacted Clew and advised him about the preferential transfers.

As part of their bankruptcy paperwork the Debtors' initially exempted $84,000.00 in their residence. They subsequently amended this exemption to $175,000.00. Reger objected to the amount of the exemption (DCN: MPD-3) based on his ability to avoid the preferential transfer to Clew on March 28, 2016 for the benefit of the estate.

2. Relief Requested

At this time Reger has reached a proposed settlement with Clew and the Debtors. A true and correct copy of the Settlement Agreement and Release ("Agreement") is filed as Exhibit A in support of the Motion. Under the Agreement the estate will receive the sum of $200,000.00 from Clew. In return the estate will release its claims against Clew and the Debtors for preferential transfer and will withdraw DCN: MPD-3 its objection to Debtors' homestead exemption. Reger seeks approval of this Agreement because the amount paid represents a fair value for the issues in dispute and will generate a substantial sum for distribution to creditors.

3. Factors to Consider

When deciding whether to approve a settlement agreement under Rule 9019, Federal Rules of Bankruptcy Procedure this court must consider the following factors: (1) the probability of success in the litigation or matter being settled; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation or matter being settled, together with the expense, inconvenience and delay necessarily attendant to the litigation or matter being settled; and (4) the paramount interests of the creditors with a proper deference to their reasonable opinions in the matter. Each factor is discussed below.

A. Probability of Success in the Litigation or Matter Being Settled.

The probability of success on avoiding the preferential transfer to Clew is high. The probability of success on the objection to the Debtors' homestead exemption is high. The proposed settlement amount, $200,000.00, is approximately 80% of the potential maximum recovery of $254,580.12. Under these facts that is a reasonable settlement figure.

B. Difficulties, if any, to be Encountered in the Matter of Collection.

If the matter proceeded to litigation the ability to collect would require sale of the Debtors' residence and/or collection of a monetary award from Clew. The ultimate certainty of receiving funds in either scenario is unknown.

C. The Complexity of the Litigation or Matter Being Settled Together With the Expense, Inconvenience and Delay Necessarily Attendant to the Litigation or Matter Being Settled.

The issues in the preference action and the objection to exemption are not factually or legally complicated. However, it will take substantial time and expense by the estate if litigation is pursued and if collection efforts, discussed above, are required.

4. The Paramount Interests of the Creditors With Proper Deference to Their Views.

Clew is a major creditor in this case and has agreed to this settlement. Without this settlement there would be no funds for distribution to any creditor.

4. Conclusion

For the reasons set forth above and in the declaration of Reger filed in support of the Motion, this court should approve the Agreement and grant the Motion.

Date: March 10, 2017

/s/ Michael P. Dacquisto
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Attorney for Chapter 7 Trustee
JOHN REGER